

USDOL/OALJ Reporter

[\*O'Sullivan v. Northeast Nuclear Energy Co.\*](#), 88-ERA-37 (Sec'y June 17, 1992)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: June 17, 1992  
CASE NOS. 88-ERA-37 & 38

IN THE MATTER OF

TIMOTHY O'SULLIVAN AND  
DONALD W. DEL CORE, SR.,  
COMPLAINANTS,

V.

NORTHEAST NUCLEAR ENERGY COMPANY,  
RESPONDENT.

CASE NO. 89-ERA-34

DONALD W. DEL CORE, SR.,  
COMPLAINANT,

V.

NORTHEAST NUCLEAR ENERGY COMPANY,  
A DIVISION OF NORTHEAST UTILITIES,  
RESPONDENT.

CASE NO. 90-ERA-5

DONALD W. DEL CORE,  
COMPLAINANT,

V.

NORTHEAST NUCLEAR ENERGY COMPANY,  
RESPONDENT.

CASE NOS. 90-ERA-33 & 34

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DONALD W. DEL CORE, SR.,  
COMPLAINANT,

V.

NORTHEAST NUCLEAR ENERGY COMPANY,  
RESPONDENT.

CASE NO. 91-ERA-51

DONALD W. DEL CORE, SR.,  
COMPLAINANT,

V.

NORTHEAST NUCLEAR ENERGY COMPANY,  
RESPONDENT.

CASE NO. 92-ERA-3

DONALD W. DEL CORE, SR.,  
COMPLAINANT,

V.

NORTHEAST NUCLEAR ENERGY COMPANY,  
RESPONDENT.

CASE NOS. 92-ERA-12, 17, 18 TIMOTHY O'SULLIVAN AND  
DONALD W. DEL CORE, SR.,<sup>[1](#)</sup>  
COMPLAINANTS,

V.

NORTHEAST NUCLEAR ENERGY COMPANY,  
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

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ORDER OF CONSOLIDATION  
AND  
ORDER TO SUBMIT ATTACHMENTS

Before me for review are the several Recommended Decision(s) and Order(s) (R.D. and O.) of the Administrative Law Judges (ALJs) in the above captioned cases arising under the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988). Recently, Respondent's counsel, Edward M. Richters, submitted the parties' "Joint Stipulation for Dismissal of Complaints with Prejudice and Approval of Settlement Agreement" (Joint Stipulations), dated March 13, 1992, indicating that all of the captioned cases had been settled.<sup>2</sup> Thereafter, by letter dated May 21, 1992, counsel Richters submitted copies of executed Settlement Agreements and General Releases for each Complainant.<sup>3</sup> Counsel Richters' letter of June 3, 1992, confirming approval of the agreements by the Connecticut Workers Compensation Commission, also has been received.

Because the request for dismissal of these complaints is based on settlement agreements between Respondent and Complainants, I must review the agreements to determine whether the terms are a fair, adequate and reasonable settlement of these ERA complaints.<sup>4</sup> U.S.C. § 5851(b) (2) (A); 29 C.F.R. § 24.6(a); *see Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. United States Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989). Although the settlement agreements need not be part of the final order, *see Hamka v. The Detroit Edison Co.*, Case No. 88-ERA-26, Sec. Ord. to Submit Settlement, Feb. 15, 1990, slip op. at 4, settlement agreements must be submitted to the Secretary for review, thereby becoming part of the case record. 5 U.S.C. § 556(e) (1988); *see McTiernan v. Public Service Company of Colorado, Inc.*, Case No. 91-ERA-37, Sec. Ord. Approving Settlement, Feb. 21, 1992, slip op. at 1-2; *Hamka v. The Detroit Edison Co.*, Case No. 88-ERA-26, Sec. Ord. to Submit Attachments, slip op. at 2, n.1.<sup>5</sup>

For reasons of expedience and administrative economy, the captioned cases ARE HEREBY CONSOLIDATED for the purpose of reviewing the Joint Stipulations and underlying Settlement Agreements in each of these cases. *See* Federal Rules of Civil Procedure 42(a), as made applicable by 29 C.F.R. § 18.1(a) (1991); *cf.* 29 C.F.R. § 24.5(b); *Neely v. Tennessee Valley Authority*, Case Nos. 90-ERA-41/42, Sec. Ord. of Consolidation and Dismissal, Oct. 24, 1990, slip op. at 2.

I note that these agreements encompass the settlement of matters arising under various laws, only one of which is the ERA.

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For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, and the cases cited therein, my review of the

agreements is limited to determining whether the terms are a fair, adequate, and reasonable settlement of Complainants' allegations that Respondent violated the ERA.

Review of the Settlement Agreements reveals that Paragraph 4.2 of each agreement states that Respondent "will pay attorney's fees" to Complainant's counsel "in accordance with a letter to [Complainant's counsel] dated March 3, 1992." No such letter was submitted with either settlement agreement, however, and I have determined that in order to properly review the terms of a settlement, any attachments containing terms upon which the agreement is based, must be submitted for review. *See Hamka*, Case No. 88-ERA-26, Sec. Order to Submit Attachments, Dec. 9, 1991, slip op. at 3. The parties therefore ARE ORDERED TO SUBMIT for review the referenced letter/s.

The parties' expressed desire to promptly conclude these matters is noted. Accordingly, the parties shall submit the March 3, 1992, letter and provide any needed clarification regarding Case No. 91-ERA-51, *see* note 3 *supra*, within ten days of the date of this order so that my review may be completed as expeditiously as possible.

SO ORDERED.

LYNN MARTIN  
Secretary of Labor

Washington, D.C.

#### [ENDNOTES]

<sup>1</sup>The spelling of Donald W. Del Core, Sr.'s name was conformed in the Notice of Receipt of Documents issued on May 29, 1992.

<sup>2</sup>The March 13 Joint Stipulations discuss settlement and dismissal of the cases pending review before the Secretary at the time of this submission, *i.e.* Case Nos. 88-ERA-37/38, 89-ERA-34, 90-ERA-5, 90-ERA-33/34, 91-ERA-51, 92-ERA-3. The six ALJs assigned to these cases issued recommended decisions on the merits of the complaints. As stated by Respondent's counsel in the March 17 letter submitting the Joint Stipulations, Case Nos. 92-ERA-12, 92-ERA-17 and 92-ERA-18 were then pending before the OALJ. On April 1, 1992, ALJ Di Nardi forwarded the R.D. and O. In Case Nos. 92-ERA-12, 17, and 18, recommending approval of the joint stipulation for dismissal of complaints and approval of settlement. Thus, all of these cases now are pending for final disposition by the Secretary. 29 C.F.R. § 24.6(b) (1991).

<sup>3</sup>The Settlement Agreement between Complainant O'Sullivan and Respondent references Case Nos. 90-ERA-35/36 as a pending action before the Department of Labor. A final disposition has been issued in these cases. *See Timothy O'Sullivan v. Northeast Nuclear Energy Co.*, Case Nos. 90-ERA-0035, 90-ERA-0036, Sec. Order Approving Settlement and Dismissing Case, Dec. 10, 1990.

Additionally, the Settlement Agreement between Complainant Del Core and Respondent fails to reference pending Case No. 91-ERA-51, which was specifically discussed in the Joint Stipulation and is listed in the May 21 letter submitting the Settlement Agreements. Unless the parties indicate otherwise in response to this Order, I will continue to consider the Settlement Agreement and Joint Stipulation with respect to Case No. 91-ERA-51, as consolidated herein.

<sup>4</sup>As indicated in prior decisions of the Secretary, the Department does not merely provide a forum for private parties to litigate their private employment discrimination suits. Protected whistleblowing under the ERA may expose not only private harms, but health and safety hazards to the public, and the Secretary represents the public interest in keeping channels of information open by assuring that settlements adequately protect whistleblowers. *See Hamka v. The Detroit Edison Co.*, Case No. 88-ERA-26, Sec. Ord. to Submit Attachments, Dec. 9, 1991, slip op. at 2, n.2; *Daily v. Portland General Electric Co.*, Case No. 88-ERA-40, Sec. Order to Submit Settlement, Nov. 6, 1989, slip op. at 3-4; *Polizzi v. Gibbs & Hill, Inc.*, Case No. 87-ERA-38, Sec. Ord. Rejecting in Part and Approving in Part Settlement Submitted by the Parties and Dismissing the Case, July 18, 1989, slip op. at 2-3.

<sup>5</sup>Under the Freedom of Information Act, 5 U.S.C. § 552, federal agencies are required to disclose requested records unless they are exempt from disclosure under the Act. *See McTiernan* at 2; *Daily v. Portland General Electric Co.*, Case No. 88-ERA-40, Sec. Ord. Approving Settlement Agreement and Dismissing Case, Mar. 1, 1990, slip op. at 1, n.1.